

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC. ON SECTIONS XVII.A-K

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Dated: January 18, 2012

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**COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.
ON SECTIONS XVII.A-K**

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively “Windstream”), submits the following comments in response to the Federal Communications Commission (“Commission”) request for input on proposals to reform and modernize the Universal Service Fund set forth in Sections XVII.A-K of the Commission’s recent Report and Order and Further Notice of Proposed Rulemaking (“FNPRM”).¹

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-

I. INTRODUCTION AND SUMMARY

Windstream supports rational reforms to transition the legacy high-cost universal service program to the Connect America Fund (“CAF”). As the Commission recognizes, reform is essential to reduce the rural-rural “digital divide” that has arisen under legacy rules, wherein certain high-cost areas have received generous support and have been served by enhanced network facilities, while other high-cost areas—exhibiting comparable cost conditions—have been virtually ignored. A successful reform approach will support existing broadband and voice services in high-cost areas and lay the groundwork for new and better broadband service in high-cost areas that have been neglected under the legacy regime. The Commission should keep an unwavering focus on the provision of robust broadband and voice services in high-cost areas, and avoid imposing obligations, restrictions, and unnecessary complexities that ultimately would serve to undermine universal service objectives specified in Section 254(b) of the Communications Act.

To ensure that all consumers have access to robust voice and broadband service, the Commission should apply the same public interest obligations to all CAF recipients, regardless of whether they use wired or wireless broadband technologies. To that end, the Commission should, at a minimum, apply any broadband measurement methodology uniformly across all CAF Phase II recipients—both wired and fixed wireless providers—as well as any unsubsidized competitors whose presence precludes support in a high-cost area. The Commission also should move swiftly to develop a standardized process for testing performance of mobile broadband services.

51, and WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking (rel. November 18, 2011) (“*FNPRM*”).

The Commission should refrain from imposing additional, unnecessary eligible telecommunications carrier (ETC) obligations that would require an increase in funding levels, further straining the budget for the high-cost program. Proposed obligations that should be avoided include heightened IP-to-IP interconnection requirements and provisions mandating new interconnection points and backhaul capacity for underserved high-cost communities to deploy their own broadband networks. Likewise, the Commission should reject the proposal to create a Technology Opportunities Program to assist communities with deploying their own broadband networks. Any entities—including municipalities and other non-traditional providers—that are capable of providing broadband that meets the requirements set forth by the Commission instead should seek CAF support through the technology-neutral competitive bidding process.

In developing a new framework for the distribution of ongoing support in price cap territories, the Commission is right to place early emphasis on the adoption of an accurate, forward-looking cost model. While clearly intending to move toward a pure competitive bidding process in the long term, the Commission correctly recognizes the importance of a viable model to facilitate the near-term distribution of funding to sustain existing service, avoid consumer disruption, and advance deployment while the competitive process is being developed and implemented. In addition, the Commission should be mindful that carriers' support must remain commensurate with their obligations, and obligations must be eliminated or reduced where a carrier receives no support or lower levels of funding.

Commission efforts to design the competitive bidding process should focus squarely on its stated goal for the mechanism—"to distribute support in a way that maximizes the extent of robust, scalable broadband service and minimizes total cost"—and tailor the process to serve that goal most effectively. In particular, (1) the CAF must not exclude high-cost areas that are

currently served by broadband; (2) the provider of last resort and funding level should be determined on a wire center basis as a default to maximize efficiency while affording flexibility to would-be competitors; (3) the CAF, like the Mobility Fund, should provide for a 10-year term of support, which would be both consistent with the Commission's efficiency and technology-neutrality goals and properly aligned with the economic realities of network construction; (4) the Commission should refrain from imposing artificial restrictions on participation or enticements to participate that would undermine the efficiency of the CAF; (5) the Commission should not relax its designated minimum performance requirements—intended to ensure universal access to applications necessary for work, health care and education—to expand the pool of technologies potentially eligible for support; (6) the number of locations that a recipient must serve in a given area should be locked at the time of the auction; (7) buildout timelines must account for the complexities and challenges of broadband deployment; and (8) financial guarantees should ensure accountability while being practical for both public and private companies.

As the Commission transitions to its new universal service regime, it is likely that current ETCs, including current carriers of last resort, will experience changes in support levels in particular areas and, in some cases, reduction or elimination of high-cost support for given areas. It is critical that the Commission consistently align service obligations with support, and any elimination of or reduction in support should be accompanied, respectively, by an elimination or a decrease in voice service obligations, not the continuation of voice obligations and/or new broadband obligations. In particular, as the ABC Plan proposes, ETCs should automatically be relieved of their legacy ETC obligations and ETC designations in those geographic areas in which they do not receive either legacy high-cost support or new CAF support, and remaining service obligations should apply only to the individual geographic units that receive support.

Compelling carriers to continue to provide service where they do not receive support would be an unfunded mandate, and it would be arbitrary and capricious to require a particular unsupported carrier, such as an ILEC, to provide service where it does not receive support while other unsupported carriers are not held to such a requirement.

Furthermore, it would be contrary to the Commission's long-term goals to direct savings realized in other components of the CAF to increase funding for rate-of-return carriers. Price cap companies' service territories today encompass more than 83 percent of the Americans who lack access to residential fixed broadband, but because the legacy system has not targeted price cap support based on the cost conditions in individual wire centers, these areas often have been underfunded. It would be contrary to the Commission's goals to expand broadband access and increase fiscal responsibility if it were to channel money away from price cap areas, where the greatest need for broadband funding is evident, to rate-of-return areas where broadband service already is available to a much greater degree—and commonly at speeds that are in excess of the Commission's 4 Mbps universalization target. It would be premature to consider allocating any additional support for rate-of-return carriers until the parameters and effects of proposed, additional reforms for rate-of-return carriers are better understood.

Finally, the Commission should take measures to avoid using limited “remote areas” funding inefficiently by subsidizing competition, particularly in “areas that are challenging for even one provider to serve.” First, in defining areas eligible for the Remote Areas Fund, the Commission should exclude any location where another carrier is required to provide voice service. Second, the Commission should exclude any location where an unsubsidized competitor offers standalone voice and broadband service at 4 Mbps downstream speeds.

II. PUBLIC INTEREST OBLIGATIONS SHOULD BE TECHNOLOGY-NEUTRAL AND NARROWLY TAILORED TO ACHIEVING THE COMMISSION'S GOAL OF UNIVERSAL BROADBAND AVAILABILITY.

The Commission should apply the same public interest obligations to all CAF recipients, regardless of whether they use wired or wireless broadband technologies. Specifically, the Commission should, at a minimum, apply any broadband measurement methodology uniformly across all CAF Phase II recipients—both wired and fixed wireless providers—as well as any unsubsidized competitors whose presence precludes support in a high-cost area. The Commission also should move swiftly to develop a standardized process for testing mobile broadband service. Such measures are necessary to ensure that high-cost support furthers the goal of enabling robust broadband and voice services in high-cost areas.

The Commission should refrain from imposing additional, unnecessary ETC obligations that would require an increase in funding levels, further straining the budget for the high-cost program. Proposed obligations that should be avoided include heightened IP-to-IP interconnection requirements and provisions mandating new interconnection points and backhaul capacity for underserved high-cost communities to deploy their own broadband networks.² The Commission, likewise, should reject the proposal to create a fund for a Technology Opportunities Program to assist communities with deploying their own broadband networks. Any entities—including municipalities and other non-traditional providers—that are capable of providing broadband that meets the requirements set forth by the Commission instead should seek CAF support through the technology-neutral competitive bidding process.

² *FNPRM* at ¶ 130.

A. The Same Public Interest Obligations Should Apply to All CAF Recipients, Regardless of the Technology They Use to Provide Service.

Throughout this rulemaking process, the Commission has expressed its goal that the universal service high-cost program transition toward a technology-neutral system.³ To that end, Windstream urges the Commission to apply the same public interest obligations—including broadband performance requirements and performance measurement methodologies⁴—to all CAF recipients, regardless of whether they provide wired or wireless, fixed or mobile broadband service. First, technology-neutral standards are needed to ensure, for all consumers, access to comparable networks—an explicit goal of Section 254 of the Communications Act. It would be contrary to the goals of the Act to institute a funding regime whereby a customer in one high-cost area would be afforded access to a network with one network management and performance standard, while another customer in a neighboring area would only have access to a network that is less “open” or less robust. Second, disparate treatment would distort competition for CAF support. Finally, any attempt to draw stark lines between technologies eligible for support would be contrary to marketplace realities, wherein the technological lines between wireline and wireless, fixed and mobile networks are becoming increasingly blurred.

³ See *id.* at ¶ 120 (noting that the Connect America Fund will “transition[] universal service to an efficient, technology-neutral system”); *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, WC Docket Nos. 10-90, 07-135, and 05-337 and GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, at ¶ 93 (rel. Feb. 9, 2011) (“*NPRM*”).

⁴ See *FNPRM* at ¶ 1014 (questioning whether the Commission should adopt a “uniform methodology for measuring broadband performance” and whether that methodology should “be uniform across different technologies”).

1. Technology-neutral standards are needed to ensure access to comparable networks for all consumers.

Section 254 of the Communications Act provides that all consumers, including those in high-cost areas, should have access to “reasonably comparable” services.⁵ It would be contrary to the Act to institute a CAF regime whereby a customer in one high-cost area would be afforded access to a network with one set of public interest obligations, while another customer in a neighboring area would only have access to a network that is less “open” or less robust. Accordingly, Windstream has long supported a uniform actual speed requirement for recipients of broadband support,⁶ and has also asserted that if fixed providers are subject to network openness rules, those same rules must apply to any provider—including any wireless provider—that offers broadband as a supported service pursuant to Section 254.⁷ Likewise, here, Windstream emphasizes that any public interest obligations imposed on CAF recipients must apply to any recipient, regardless of the technology they use to provide service. Given the Commission’s intention “not to subsidize competition in areas that are challenging for even one provider to serve,”⁸ such uniform requirements are needed to ensure that all Americans in high-cost areas have access to services that are reasonably comparable to those available in lower-cost areas where competition is more robust.

⁵ 47 U.S.C. § 254(b)(3).

⁶ See Comments of Windstream Communications, Inc., WC Docket Nos. 10-90, 05-337, 07-135, 03-109, GN Docket No. 09-51, CC Docket Nos. 96-45, 01-92, at 16-18 (April 18, 2011) (Windstream CAF NPRM Comments) (noting need for technology-neutral performance and openness standards); Comments of Windstream Communications, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 12 (July 12, 2010) (Windstream CAF NOI Comments) (noting Windstream’s concern with undue disparities in how the OBI White Paper addresses presumed broadband deployment requirements for wireless and wireline networks).

⁷ See Letter from Malena F. Barzilai, Windstream, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, CC Docket Nos. 01-92 and 99-68, WC Docket Nos. 04-36, 10-90, 05-337, and 07-135, at 2 (January 27, 2011).

⁸ See *FNPRM* at ¶ 319.

2. Disparate treatment would distort competition for CAF support.

The Commission has expressed its general intention to award support to only one broadband provider per geographic area through the CAF.⁹ Thus, in addition to creating the danger that neighboring services would not be “reasonably comparable,” technology-specific public interest obligations within such a format would distort competition for CAF support. Providers subject to less stringent requirements with regard to speed, coverage, or network openness, for example, likely would be able to under-bid those that are subject to more stringent requirements and thus deny consumers better service in the long term. Indeed, providers subject to less stringent requirements—even if capable of offering more robust broadband services—would be incentivized to submit bids to deploy the bare minimum of services eligible for support, so as to decrease their costs and increase their chances of submitting the winning bid.

Moreover, technology-specific performance obligations would run contrary to long-standing Commission precedent that recognizes, in many contexts, the importance of treating like services alike. For example, in its various broadband Internet classification orders, the Commission scrupulously avoids favoring one technological platform over another, recognizing that doing so would distort a developing marketplace to the detriment of consumers.¹⁰ In the *Wireless Broadband Order*, which brought fixed and mobile wireless technologies under the same regulatory framework as wired technologies, the Commission cites “the Congressional goal of promoting broadband deployment and encouraging competition in the provision of broadband

⁹ See *id.* at ¶ 1195 (stating that the Commission intends to “generally be supporting a single provider for a given geographic area” and “would support more than one provider in an area only if doing so would maximize coverage”).

¹⁰ See, e.g., *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, Report and Order, 20 FCC Rcd 14853, ¶ 1 (2005); *United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, Memorandum Opinion and Order, 21 FCC Rcd 13281, ¶ 2 (2006).

services.”¹¹ It warns of the dangers of treating wireless broadband services differently: “Without a consistent approach toward all Internet service providers (both within the wireless industry and across diverse technologies), and absent a showing that an application of common carrier regulation to only one type of Internet access provider will promote the public interest, *the possibility of full and fair competition will be compromised.*”¹² This finding is no less true in the context of the CAF, where providers will compete for support and the distortion of this competition ultimately would harm consumers in high-cost areas.

3. Uniform standards are most appropriate in this age of technological convergence.

Finally, any attempt to draw stark lines between technologies eligible for support would be contrary to the reality of the marketplace, in which technological lines between wireline and wireless, fixed and mobile networks are becoming increasingly blurred. As Windstream has previously discussed in great detail,¹³ wired and wireless broadband services compete with one another in the market and will continue to do so more vigorously as the spectral efficiency and speed of wireless technologies continue to increase. In addition, the networks used to support wireless and wireline broadband services are becoming increasingly interchangeable as wireless companies respond to their own capacity limits by encouraging the use of femtocells and Wi-Fi to offload traffic onto wireline broadband networks at the point closest to the end-user. The result is that for a very large percentage of broadband communications, there is *no technological*

¹¹ *Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, ¶ 55 (2007) (Wireless Broadband Order).

¹² *Id.* (emphasis added).

¹³ See Comments of Windstream Communications, Inc., GN Docket No. 09-191, WC Docket No. 07-52, at 6-19 (October 12, 2010); Reply Comments of Windstream Communications, Inc., GN Docket No. 10-127 (August 12, 2010).

difference between broadband connectivity used to support traditional wireline broadband service and the connectivity supporting a “wireless” handset’s broadband service.

Even where differences currently exist, these differences are matters of degree and not kind. While wireless providers have spectrum scarcity and network management issues, wireline and cable operators have to manage finite network capacity as well—and these capacity constraints are compounded by the wireless providers’ strategy of offloading voice and broadband traffic onto wired broadband networks wherever possible. Indeed, wireline carriers have faced massive increases in consumer Internet usage in recent years. The average Windstream customer now generates more than 16 times the amount of downstream Internet traffic generated by the average Windstream customer in July 2006. Deploying additional fiber and upgrading electronics to handle this increased demand may not be the same process as acquiring new spectrum in an auction, but these measures are hardly so inexpensive and inconsequential that wired providers have an insignificant need to manage capacity on their networks. Holding wireline providers to more stringent public interest obligations would effectively penalize them for investing more in ensuring optimum performance for their customers (whether that performance is measured by speed or by degree of network openness), and would run counter to the increasing technological convergence in the industry.

B. Any Methodology for Measuring Broadband Performance Should Be Uniform and Balance the Need for Accurate Data Against the Burden on Providers.

Consistent with its desire to implement a technology-neutral system¹⁴ and to ensure reasonable comparability of the capabilities offered to end users,¹⁵ the Commission should, at a minimum, apply any broadband measurement methodology that it adopts uniformly across all

¹⁴ See *FNPRM* at ¶ 120.

¹⁵ See *id.* at ¶ 80.

CAF recipients—both wired and fixed wireless providers—as well as any unsubsidized competitors whose presence precludes support in a high-cost area. Otherwise, providers that are subject to a more rigorous measurement regime will be at a competitive disadvantage, and consumers in high-cost areas will not be assured of gaining “access to affordable modern communications networks capable of supporting the necessary applications that empower them to learn, work, create, and innovate.”¹⁶

Moreover, the Commission should accelerate its efforts to develop a standardized process for measuring the performance of mobile broadband services. As the Measuring Broadband America report released last August shows, the Commission has already applied extensive performance tests to wireline broadband providers.¹⁷ Yet nearly two years after the National Broadband Plan called for “more transparent and standard disclosures of coverage, speeds, and performance for mobile networks,”¹⁸ no corresponding tests have been initiated—let alone completed—for mobile broadband providers. It is ill-advised for the Commission to allocate scarce universal service resources toward mobile services without having first obtained valid data on the performance of these services. As former Commissioner Michael Copps has noted, “good regulatory decisions depend on good data.”¹⁹ In addition, a testing regime for mobile broadband services will aid the Commission in fulfilling its statutory duties under section 706 of

¹⁶ See *id.* at ¶ 51.

¹⁷ See Measuring Broadband America, A Report on Consumer Wireline Broadband Performance in the U.S., FCC’s Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, Docket No. (August 2, 2011).

¹⁸ Federal Communications Commission, Connecting America: The National Broadband Plan at 147 (rel. March 16, 2010) (“National Broadband Plan”).

¹⁹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 10-133, Statement of Commission Michael J. Copps (rel. June 27, 2011).

the Telecommunications Act of 1996,²⁰ and will aid mobile broadband providers in complying with the new transparency rule adopted in the Commission's *Open Internet* order.

With regard to the development of any specific standardized measurement methodology, the Commission should balance the need for accurate data against the network demands that broadband testing can impose. Applying broadband performance tests to a large pool of end users could place such a load on networks as to slow performance for customers and/or require service providers to add capacity just to handle the testing. Given the Commission's purposes—to verify that providers are meeting broadband speed and latency targets—it would be appropriate to limit performance tests to a statistically significant sample of customers, rather than require unnecessary and overly burdensome data collection that covers every end user.

C. The Commission Should Refrain From Imposing Obligations That Are Not Essential for Achieving the Goal of Ubiquitous Access to Robust Broadband and Voice Services.

The Commission should refrain from requiring CAF Phase II recipients to meet additional ETC obligations above and beyond what is required to ensure universal, robust broadband and voice availability. In particular, the Commission should refrain from requiring IP-to-IP interconnection obligations beyond whatever framework the Commission adopts more broadly for all entities,²¹ and should not mandate the provision of interconnection points and backhaul capacity for underserved high-cost communities to deploy their own broadband

²⁰ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Progress Report and Order on Reconsideration, at ¶ 26 (May 20, 2011) (Seventh Section 706 Report) (noting that Report does not address mobile wireless broadband availability because of concerns about accuracy of existing data).

²¹ *FNPRM* at ¶ 1028.

networks.²² As the ABC Plan Coalition has explained, such conditions are not administratively feasible to implement or monitor, and the conditions would require an increase in funding levels, further straining the budget for the high-cost program.²³

It does not make sense to require CAF Phase II funding recipients to build for and accommodate broadband competitors in areas that are prohibitively expensive for even one provider to serve. As the ABC Plan Coalition has noted, such an approach would increase funding requirements because providers would need to deploy additional facilities and, if a competitor ever appears, would realize less revenue due to a smaller customer base.²⁴ In turn, the Commission would be forced either to increase the budget for the CAF or to delay deployment of broadband service in some high-cost areas. As such, conditions to build for and accommodate broadband competitors would actually hinder the Commission's goals of making affordable broadband available to all Americans while controlling the size of the Universal Service Fund.²⁵ The Commission should reject such conditions and adopt only those requirements that are central to achieving the objectives of the high-cost program.

²² *Id.* at ¶ 1029.

²³ Joint Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 96-45, 01-92, GN Docket No. 09-51, at 16 (August 24, 2011) (ABC Plan Coalition Comments). *See also* Comments of Cox Communications, Inc., WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 96-45, 01-92, GN Docket No. 09-51, at 26 (August 24, 2011) (noting that “[n]early all of [the proposed additional requirements] would make it more expensive to deploy broadband service in unserved areas, and all of them would make it less likely that providers would be willing to invest the capital necessary to deploy that service”).

²⁴ ABC Plan Coalition Comments at 16.

²⁵ *FNPRM* at ¶ 11 (discussing the four principles guiding reform of the high-cost program).

D. A Separate Technology Opportunities Program Is Unnecessary and Would Hinder Achievement of the Commission’s Broader Reform Objectives.

For similar reasons, the Commission should reject the proposal to create a fund for a Technology Opportunities Program that would assist communities with deploying their own broadband networks.²⁶ Any entities—including municipalities and other non-traditional providers—that are capable of providing broadband that meets the requirements set forth by the Commission should be permitted to seek CAF support through a technology-neutral competitive bidding process. However, creating a separate fund for non-traditional providers would undermine the goals of the high-cost program. First, it would divert scarce resources from a larger-scale mechanism that is designed to deliver broadband as efficiently as possible, and direct those resources toward a smaller program that can offer no such promises of efficiency. Second, if the CAF and a separate fund for non-traditional providers address service in the same area, the presence of the separate fund would increase CAF funding requirements, because CAF providers would realize less revenue due to the presence of competition subsidized by the separate fund. Third, redundant support also would be contrary to the Commission’s intentions to support only one provider per area and not to fund areas served by an unsubsidized competitor.²⁷ The Commission can best achieve its goal of extending broadband coverage in unserved areas if it focuses on the administration of a technology-neutral CAF that is open to all, rather than supporting special-interest projects that are unlikely to meet the Commission’s efficiency and fiscal responsibility goals.

²⁶ *Id.* at ¶ 130.

²⁷ *See id.* at ¶ 1195 (stating that the Commission intends to “generally be supporting a single provider for a given geographic area” and “would support more than one provider in an area only if doing so would maximize coverage”); ¶ 103 (noting that “providing universal service support in areas of the country where another voice and broadband provider is offering high-quality service without government assistance is an inefficient use of limited universal service funds”).

III. THE CONNECT AMERICA FUND PHASE II FOR PRICE CAP CARRIERS SHOULD INCORPORATE A VIABLE MODEL, A TARGETED AND EFFICIENT COMPETITIVE BIDDING PROCESS, AND ALIGNMENT OF SUPPORT AND OBLIGATIONS.

As the Commission embarks on the development of a new framework for the distribution of ongoing high-cost support, it rightly places early emphasis on the adoption of an accurate, forward-looking cost model that should inform the targeting of support.²⁸ While clearly intending to move toward a pure competitive bidding process in the long term,²⁹ the Commission correctly recognizes the importance of a viable, efficient model to facilitate the near-term distribution of funding to sustain existing service, “avoid consumer disruption,” and advance the Commission’s deployment goals while the competitive process is being developed and implemented.³⁰ In addition, the Commission should be mindful that carriers’ support must remain commensurate with their obligations, and obligations must be eliminated or reduced in areas where a carrier receives no support or lesser levels of funding. Finally, with respect to the overall design of the competitive bidding process, the Commission should focus squarely on its stated goal for the mechanism—“to distribute support in a way that maximizes the extent of robust, scalable broadband service and minimizes total cost”³¹—and tailor the process to serve that goal most effectively.

A. A Competitive Process Will Be Most Successful If Accompanied By (1) Adoption of a Viable Model To Inform Targeting of Support, and (2) Elimination of a Carrier’s Obligations in Areas Where the Carrier Does Not Receive Support.

The Commission will be most successful in its long-term plans if it adopts, early in the process, a working model to properly identify high-cost areas and the support needed to deploy

²⁸ See *id.* at ¶¶ 181-193.

²⁹ *Id.* at ¶ 178.

³⁰ See *id.* at ¶ 165.

³¹ *Id.* at ¶ 1189.

and/or maintain service in those areas. As the Commission recognizes, a viable model will be essential to facilitate the near-term distribution of funding to sustain existing service, “avoid consumer disruption,” and advance the Commission’s deployment goals while the competitive process is being developed and implemented.³² Windstream, as a member of the ABC Plan Coalition, participated extensively in the development of the CostQuest Broadband Analysis Tool (CQBAT), which permits calculation of an efficient, forward-looking cost of providing broadband and estimated required support levels on a census block basis.³³ The Coalition strongly supports the Commission’s efforts to adopt a “robust model” that will “accurately estimate the cost of a modern voice and broadband capable network,”³⁴ and, to help the Commission fulfill that objective, the Coalition plans to submit a refined version of the CQBAT for review by the Commission and all interested parties.³⁵

In addition, in developing a competitive bidding process for the distribution of ongoing support in price cap territories, the Commission should be mindful that carriers’ support must remain commensurate with their obligations, and obligations must be eliminated or reduced in areas where a carrier receives no support or lesser levels of funding. As Windstream has noted in previous filings and discusses at length elsewhere in this document, the Commission cannot lawfully require any carrier to continue to provide service in a high-cost area where it is not the

³² See *id.* at ¶ 165.

³³ See Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attachment 3 at 4 (filed July 29, 2011) (ABC Plan).

³⁴ *FNPRM* at ¶ 184.

³⁵ See Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (December 29, 2011) (providing notice that the ABC Plan Coalition intends to submit a cost model to the Commission on or before February 1, 2012).

CAF recipient.³⁶ Unfunded mandates to serve will result in degradation of existing communications services in high-cost areas and could imperil the carriers that serve them.

B. The Design of the Competitive Bidding Process Must Reflect the Commission's Goal of Maximizing the Extent of Robust Broadband While Minimizing Costs.

With respect to the overall design and mechanics of the competitive bidding process, the Commission should focus squarely on its primary goal in this proceeding—directing a controlled amount of funding toward the efficient deployment and provision of robust voice and broadband service in high-cost areas³⁷—and tailor the process to serve that goal most effectively. In particular, Windstream makes the following recommendations: (1) The CAF must not exclude high-cost areas that are currently served by broadband; (2) the provider of last resort and funding level should be determined on a wire center basis as a default to maximize efficiency while affording flexibility to would-be competitors; (3) the CAF, like the Mobility Fund, should provide for a 10-year term of support, which would be both consistent with the Commission's efficiency and technology-neutrality goals and properly aligned with the economic realities of network construction; (4) the Commission should refrain from imposing artificial restrictions on participation or enticements to participate that would undermine the efficiency of the CAF; (5) the Commission should not relax its designated minimum performance requirements—intended to ensure universal access to applications necessary for work, health care and education—to

³⁶ See Section IV *infra*. See also, e.g., Windstream CAF NPRM Comments at 20; Reply Comments of Windstream Communications, Inc., WC Docket Nos. 10-90, 05-337, 07-135, 03-109, GN Docket No. 09-51, CC Docket Nos. 96-45, 01-92, at 22 (May 23, 2011) (Windstream CAF NPRM Reply); Windstream CAF NOI Comments at 23. See also Comments of AT&T, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, and GN Docket No. 09-51, at 84 (April 18, 2011) (AT&T CAF NPRM Comments) (noting that “a heavy-handed approach that imposes unfunded mandates or evolving service obligations that become more burdensome over time would undermine the Commission's broadband goals”).

³⁷ See *FNPRM* at ¶ 1189 (noting that competitive bidding mechanism is designed “to distribute support in a way that maximizes the extent of robust, scalable broadband service and minimizes total cost”).

expand the pool of technologies potentially eligible for support; (6) given the limited budget of the CAF, the number of locations that a recipient must serve in a given area should be locked at the time of the auction; (7) buildout timelines must appropriately account for the complexities and challenges of broadband deployment; and (8) financial guarantees should ensure accountability while being practical for both public and private companies.

1. The CAF must not exclude high-cost areas that are currently served by broadband.

Windstream urges the Commission to distribute support in all high-cost areas that the CAF Phase II model identifies as above the cost benchmark,³⁸ and not to exclude otherwise qualifying areas in which the ILEC currently provides broadband.³⁹ The fact that an area is currently served does not mean that the area would continue to be served absent support. Indeed, excluding all served areas from the CAF would cut off many high-cost areas from receiving necessary ongoing support to offset continuing costs of providing voice and broadband service.

Ongoing support is needed to provide carriers with a reasonable opportunity to recover past and current investments. As the National Broadband Plan recognized, the existing high-cost support program has indirectly contributed to the deployment of broadband networks, which utilize many of the same network components as supported voice services.⁴⁰ ILECs have

³⁸ The Commission’s framework contemplates that a cost benchmark would be used to constrain the funding level in the CAF Phase II program for price cap carriers to meet the Commission’s budget. *See id.* at ¶ 156 (“Using the model, we will estimate the support necessary to serve areas where costs are above a specified benchmark, but below a second “extremely high-cost” benchmark”). It is anticipated that the cost benchmark would assure that only high-cost census blocks would be targeted for support; however it is not intended that the funding benchmark would capture all areas that are high-cost. In other words, it is likely that the calculated cost benchmark would be above what a high-cost benchmark would be if there were no budget constraints.

³⁹ *See id.* at ¶ 1191 (seeking comment on “other approaches,” including “exclud[ing] areas that, based on the most recent data available, are served”).

⁴⁰ *See* National Broadband Plan at 141.

invested well over \$100 billion to develop a nationwide network that provides high-quality, reliable, and ubiquitous coverage, and ILECs are continuing to invest billions of dollars to upgrade existing networks for increasingly faster broadband and to extend the reach of these networks. Furthermore, especially in the lowest-density, highest-cost areas of the country, public switched telephone network facilities, which also have been funded with high-cost support, will continue to be an essential component of the delivery of high-quality, reasonably priced voice and broadband services to consumers.

Federal funding is needed to recover a portion of the costs for operating and maintaining networks in sparsely populated rural areas—costs that do not evaporate with the implementation of IP technology.⁴¹ The economic reality that underlay the framework of the legacy universal service and intercarrier compensation systems—the extremely high costs of providing reliable network service to customers in low-density areas—still remains. Operating and maintaining last-mile and second-mile infrastructure connecting customers to the carrier’s network will continue to be necessary, and costly, regardless of the network technology. To fulfill the directive of Section 254 of the Act,⁴² continued support is necessary to ensure that these existing facilities are not stranded and that all Americans receive consistent, reliable, and high quality service, regardless of where they live.

⁴¹ See, e.g., Comments of Windstream Communications, Inc., WC Docket No. 05-337, CC Docket No. 96-45, at 14-15 (April 17, 2008) (Windstream 2008 Comments) (explaining that broadband operating costs include leasing backhaul, transport fees to connect island exchanges to the Internet backbone; creation and maintenance of a system that tracks the provision and capacity of each Digital Subscriber Line Access Multiplexer; grooming of cable pairs; and installation of jumpers to connect a phone line to broadband equipment); Letter from Eric N. Einhorn, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-337, 06-122, 99-68, 08-152, 07-135, CC Docket Nos. 01-92, 96-45 (October 27, 2008) (detailing costs of widespread deployment of IP technology and expenses of operating IP system in rural areas).

⁴² 47 U.S.C. § 254(b)

2. Support should be distributed on a wire center basis.

Though it may make sense to have the new cost model identify high-cost areas on a census block basis, for the purposes of the CAF Phase II distribution mechanism, the provider of last resort and funding level should be determined on a wire center basis as a default. Any would-be competitor should be permitted to challenge this default and propose its own geographic unit in an area where it is willing to assume high-cost responsibilities. Such a regime would maximize efficiency while affording would-be competitors sufficient flexibility to craft appropriate broadband deployment plans.

As Windstream and others have noted in the past, a wire center-based regime will permit ILECs—the only entities that have shown any measurable interest in deploying fixed broadband to and serving as carriers of last resort in high-cost areas⁴³—to compete for high-cost funding to deploy and use capital efficiently. As a default, wire center is preferable to other geographic units for a variety of reasons, including: (1) it reasonably reflects the geographic and demographic realities of service areas;⁴⁴ (2) it is the unit by which carrier-of-last-resort responsibilities have been established and thus would facilitate a seamless transition of those duties into the broadband era;⁴⁵ and (3) competing carriers often rely on parts of the ILEC infrastructure to obtain second and middle-mile capacity.⁴⁶

⁴³ See, e.g., Windstream CAF NOI Comments at 7-16.

⁴⁴ See Reply Comments of Windstream Communications, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 32 (August 11, 2010) (Windstream CAF NOI Reply); Comments of CenturyLink, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 21 (July 12, 2010) (CenturyLink CAF NOI Comments) (“since these wire centers were built in a logical fashion to serve groups of customers in a geographic area, this same logic could inform a competing provider’s decisions to build a network to provide broadband service to the same area”).

⁴⁵ Windstream CAF NOI Reply at 32; CenturyLink CAF NOI Comments at 21; Comments of United State Telecom Association, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 26 (July 12, 2010) (noting that wire center “is the unit by which the current universal service obligations will be replaced”). See also Comments of NASUCA et al. on Notice of Inquiry, WC

At the same time, Windstream’s proposed regime also will afford other types of providers the opportunity to challenge the use of a wire center so that they can best leverage their own existing infrastructure to serve a geographic area. There is significant Commission precedent in support of this approach: The Commission has granted multiple wireless CETCs permission to redefine ILEC study areas to better resemble their license areas when applying for federal support.⁴⁷ Employing wire centers as the standard basis for funding decisions but, similarly, allowing competitors to challenge this default would ensure that the limited high-cost funding is distributed in the most efficient way possible.

3. The term of support should be 10 years, as with the Mobility Fund.

Despite the fact that it proposes a 10-year term of support for Mobility Fund Phase II support recipients, the Commission suggests only a five-year term of support for providers that receive funding through a CAF Phase II competitive bidding process.⁴⁸ A 10-year term of support for both funds would be both most consistent with the Commission’s intention to “transition[] universal service to an efficient, technology-neutral system”⁴⁹ and most properly aligned with the economic realities of network building. Moreover, a longer term of support

Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 9 (July 12, 2010) (stating that “given that current support is primarily for [ILECs] (and that the Commission is contemplating eliminating support for wireless carriers), this application of the model would suggest a focus on ILEC wireline facilities” (internal citations omitted)).

⁴⁶ CenturyLink CAF NOI Comments at 21-22.

⁴⁷ See, e.g., *High-Cost Universal Service Support, Federal State Joint-Board on Universal Service, Alltel Communications, Inc., et al. Petition for Designation as an Eligible Telecommunications Carrier*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 17940 (2008) (designating St. Lawrence Seaway as an ETC with a service area below the study level area of Citizens/Frontier).

⁴⁸ See *FNPRM* at ¶¶ 1138, 1197.

⁴⁹ *Id.* at ¶ 120. See also Report and Order, *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶¶ 46-52 (1997) (adopting neutrality principles for Universal Service Fund).

would enable providers to roll out more broadband, thus better serving the Commission’s broadband availability goals.

In proposing a 10-year term of support for Mobility Fund Phase II recipients, the Commission notes that it “seek[s] to balance providing adequate certainty to carriers to attract private investment and deploy services while taking into account changing circumstances.”⁵⁰ These considerations are no less relevant in the wireline context. The deployment of broadband infrastructure is a long-term proposition; the Commission-determined depreciable lives of the assets that carriers must put into place are much longer than five years—for example, the depreciable life of digital circuit equipment is 11 to 13 years, and of buried cable is between 20 and 30 years.⁵¹ Carriers are much more likely to be able to make significant commitments of resources, and attract the private investment needed to do so, if they are assured of receiving CAF funding to offset such expenses for a reasonable amount of time. In addition, a longer term of support makes it more likely that carriers will be able to invest in improving networks to meet the growing demand that the Commission predicts.⁵² Conversely, a shorter term of support makes it less likely that carriers will be able to utilize the support to fund “robust, scalable”⁵³ networks. Therefore, as the Commission suggests, “a longer time-period, e.g., ten years, would better serve [its] goals” for deploying both fixed and mobile broadband services.

⁵⁰ *FNPRM* at ¶ 1138 (presenting 10 years as its determined “optimal term for ongoing support”).

⁵¹ *See* FCC’s Current Depreciation Ranges, available at <http://transition.fcc.gov/wcb/ppd/depreciation/documents/currDepRanges.pdf>.

⁵² *See, e.g., FNPRM* at ¶ 107 (noting that the National Broadband Plan estimated that by 2017, average advertised speeds for residential broadband would be approximately 5.76 Mbps downstream).

⁵³ *See id.*

Moreover, the Commission’s stated justification for proposing a five-year term of support for recipients of fixed broadband funding through a competitive bidding process—to match the term of support for fixed providers that accept state-level model determined support—is inapt.⁵⁴ In the context of model determined support, the Commission found that a five-year funding term was appropriate to balance the desire to capitalize on the ability of incumbent carriers that can “deploy broadband networks rapidly and efficiently” with the desire to ensure that all areas are opened up to competitive bidding in a relatively short period of time.⁵⁵ No such balancing, however, is necessary in the context of fixed broadband support that is allocated pursuant to competitive bidding. In areas where the ILEC declines the state-level commitment, an open competitive process will ensure that any interested carriers will have an opportunity to bid and support definitively will be distributed to the carrier able to provide the requisite services at the lowest cost. Therefore, there is no need for a shorter term of support to ensure the efficient, competitively neutral distribution of support. Under those circumstances—for the reasons the

⁵⁴ See *id.* at ¶ 1197 (proposing a term of support that “is equal to that adopted for providers that accept state-level model-determined support”). Windstream opposes a five-year term of support for the state-level commitment as well.

⁵⁵ See *id.* at ¶¶ 177-78 (explaining that the “purpose of the five-year commitment is to establish a limited, one-time opportunity for the rapid deployment of broadband services over a large geographic area,” and that this departure from the principle of “strict competitive neutrality” is limited and in service of the goals of promoting broadband deployment and “ubiquitous and comparable broadband services”). This view is contrary to that of Windstream and other members of the ABC Plan Coalition. A 10-year term of support permits a provider sufficient time and stability to realize a return on its significant investment, while a shorter term adds uncertainty to the process, increasing costs for providers and putting added strain on the fund. See ABC Plan, Attachment 1 at 2 (proposing a 10-year term of support); Letter from Debbie Goldman, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, 07-135, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (October 14, 2011) (stating that “Ten years is the minimum time frame for allocating USF High-Cost support to ensure that public funding supports continuous upgrading of networks, rather than just hopping from one carrier to another”).

Commission cited when proposing a ten-year funding term for the Mobility Fund Phase II—a longer term of support strikes the proper balance and would be competitively neutral.

4. The Commission should not undermine the efficient distribution of support with artificial restrictions on participation or enticements to participate.

The Commission’s stated rationale for utilizing a competitive bidding mechanism is “to distribute support in a way that maximizes the extent of robust, scalable broadband service” in high-cost areas.⁵⁶ To that end, the Commission should tailor the competitive bidding mechanism expressly to facilitate the efficient distribution of support, and refrain from imposing artificial restrictions on participation or enticements to participate that would undermine this goal. In particular, the Commission should reject “any limit on the geographic extent to which any one provider may be awarded such support” or any limit on the total amount of support that can go to any one provider,⁵⁷ and should decline to establish a bidding preference in a CAF auction for small businesses.⁵⁸ Furthermore, the Commission should follow its inclination not to restrict the carriers’ eligibility to participate in the competitive bidding process if they declined some level of model-determined support for the area that will be auctioned.⁵⁹

A competitive bidding process unencumbered by such restrictions would permit willing participants to compete on equal terms to serve the Commission’s goals—sustaining existing broadband and voice services while expanding robust, scalable broadband in the most efficient fashion. While the introduction of such restrictions might serve other, tangential agendas (e.g.,

⁵⁶ *FNPRM* at ¶ 1189. *See also id.* at ¶ 1195 (stating that “the Commission’s objective is to distribute the funds . . . in such a way as to bring advanced services to as many consumers as possible in areas where there is no economic business case for the private sector to do so”).

⁵⁷ *See id.* at ¶ 1196.

⁵⁸ *See id.* at ¶ 1213 (seeking comment on whether a small business bidding preference “would be consistent with the objective of providing such support”).

⁵⁹ *See FNPRM* at ¶ 1201.

maximizing the number of wireless providers receiving support), the Commission's ability to leverage the experience and advantages of some larger providers to advance its goals would be hindered, diminishing the efficiency of the program.⁶⁰ Incumbent LECs and other larger carriers have already invested many billions of dollars in deploying the lion's share of broadband to the Nation and have developed an unmatched expertise in deploying networks through their extensive hands-on experience.⁶¹ They also enjoy access to capital, existing supply chains and labor agreements, hiring flexibility, and other attributes consistent with achievement of the Commission's goals. Moreover, existing commercial networks typically will offer the most efficient way to reach unserved and underserved areas. There is no valid basis for excluding or hamstringing the most experienced broadband providers from participating fully in an open competitive bidding process. Doing so, in fact, would undermine the fundamental goals of instituting a competitive process.

⁶⁰ Merely because a price cap carrier determines that there is not a viable business case to build out broadband in all of its wire centers statewide does not mean that such a business case does not exist in some of its wire centers. Concern that this approach would allow incumbent price cap carriers to pick and choose which wire centers in which to make broadband service available does not justify exclusion of price cap carriers from Phase II bidding. A price carrier would not assume the risk of moving to competitive bidding – and potentially lose the ability to receive CAF support needed for certain areas – if the statewide average commitment would result in sufficient net revenues for its operations. And if the statewide commitment would not produce sufficient net revenues, there is no rational reason for penalizing a price cap carrier under this circumstance. The carrier would have no special ability to engage in “cherry picking.” Instead, it merely would be in the same position as all other entities in the bidding.

⁶¹ See, e.g., “Over 635,000 Add Broadband in the Third Quarter of 2011,” Press Release, Leichtman Research Group (November 18, 2011), *available at* <http://www.leichtmanresearch.com/press/111811release.html> (stating that the 18 largest cable and telephone providers in the United States—including nearly all of the price cap carriers—represent about 93 percent of the broadband market.)

5. Relaxing performance requirements to expand the pool of potential competitors would harm consumers in high-cost areas.

Windstream supports the Commission's proposal to apply the same specified performance requirements across all broadband providers that receive CAF Phase II support, whether the support is awarded pursuant to a model or a competitive bidding process.⁶² The Commission would contravene its own stated goals if it were to relax the minimum performance requirements to expand the pool of bidders potentially eligible for support under the competitive bidding process.⁶³

A consistent focus at this point on second-mile infrastructure sufficient to support 4 Mbps service is a prudent response to both current and future demands. A fundamental principle underlying the Commission's reform of the Universal Service Fund is that "all Americans . . . should have access to affordable modern communications networks capable of supporting the necessary applications that empower them to learn, work, create, and innovate."⁶⁴ As noted in the *FNPRM*, the Commission has found that 4 Mbps actual download speed is a reasonable benchmark for the availability of "advanced telecommunications capability," based on an examination of overall Internet traffic patterns, the requirements of streaming standard-definition video in real time, and the analysis underlying the National Broadband Plan's universalization target.⁶⁵ Moreover, as Windstream has discussed previously,⁶⁶ a 4 Mbps download speed

⁶² See *FNPRM* at ¶ 1203.

⁶³ See *id.* at ¶ 1204.

⁶⁴ See *id.* at ¶ 51.

⁶⁵ See *id.* at ¶ 93 (citing the 2010 and 2011 Broadband Progress Reports and National Broadband Plan). See also National Broadband Plan at 135 (noting that a 4 Mbps download speed will support a set of applications that include sending and receiving e-mail, downloading Web Pages, photo and video, and using simple video conferencing"). With respect to upload speeds, Windstream continues to urge the Commission to set a requirement of 768 Kbps actual speed, rather than 1 Mbps. As Windstream and others have discussed at length, current

threshold facilitates a prudent but scalable build-out approach, consistent with the Commission's goals.⁶⁷ It will result in fiber deployments deeper in the network, enhancing the second-mile and middle-mile infrastructure used by both wired and wireless providers, while still continuing to utilize existing last-mile infrastructure in the near term.⁶⁸ An initial investment in second-mile fiber will bring baseline broadband to unserved Americans and lay the groundwork for continued advancements in broadband services offered by both wireline providers and wireless providers, which often rely on second-mile fiber connectivity for new and existing cell sites.⁶⁹ As former Commission chief technologist Dale Hatfield explained in a recent article, "fiber-optic cable is often referred to as being 'future proof'," and policymakers should focus on the "immediate need to bring fiber significantly closer to the customer to support a vastly increased number of access nodes."⁷⁰ Down the road, as customers' bandwidth needs grow, it may be feasible to augment existing last-mile facilities or replace them with fiber connecting to the second-mile facilities.

technologies can deliver 768 Kbps upload speed with significantly lower deployment costs than 1 Mbps would require, and 768 Kbps would be responsive to consumer demand. *See, e.g.,* Windstream CAF NPRM Comments at 18; AT&T CAF NPRM Comments at 94; CenturyLink CAF NPRM Comments at 21-22; Comments of ADTRAN, Inc., CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, and GN Docket No. 09-51, at 10-11, 22 (April 18, 2011); Windstream CAF NOI Comments, Appendix at 6.

⁶⁶ *See* Windstream CAF NPRM Comments at 17.

⁶⁷ *See FNPRM* at ¶ 25 (emphasizing that the competitive bidding process is intended "to distribute support in a way that maximizes the extent of robust, scalable broadband service subject to an overall budget").

⁶⁸ Achieving conventional ADSL2+ download speeds of 4 Mbps will require broadband serving area designs with maximum loops of 12,000 to 15,000 feet, instead of traditional 18,000 foot serving area designs that deliver a minimum of 3 Mbps. A 4 Mbps download requirement will drive the creation of smaller serving areas and the deployment of fiber closer to the end user as these smaller serving areas are connected to the network.

⁶⁹ *See* Comments of Windstream Communications, Inc., on NBP Public Notice No. 11, GN Docket Nos. 09-47, 09-51, 09-147, at 9-10 (Nov. 4, 2009).

⁷⁰ Dale N. Hatfield, "The Challenge of Increasing Broadband Capacity," *Federal Communications Law Journal*, Volume 63, Number 1, at 66 (Dec. 2010). Hatfield also notes

For the Commission to reject setting a lower performance requirement—because it is less capable of supporting the applications that the Commission has deemed necessary for all Americans—in the Order and now find that a lower performance requirement could be “acceptable” is simply nonsensical. Essentially, the Commission would be dispensing with all of its goals and standards with respect to broadband deployment and competitive neutrality in the name of attracting more companies to the bidding process. Such a result would be to the detriment of consumers in high-cost areas—who would be significantly shortchanged when the Commission’s recipient of CAF funds is an entity that cannot provide service capable of supporting the applications that the FCC has already determined they need to operate their businesses, teleconference with doctors, or take advantage of distance-learning.

6. Given the limited budget of the CAF, the number of locations providers are obligated to serve must be locked in at the time of the auction.

Windstream opposes the Commission’s proposal that support recipients be required to provide subsidized service to as many locations as request service in their areas during the term of support.⁷¹ Instead, Windstream supports requiring CAF recipients to serve only the high-cost locations identified at the time of the auction.⁷²

Carriers will develop bid amounts based on cost estimates for serving the set number of locations within a particular area. To the extent that number of locations cannot be known—and indeed could be significantly more than the number at the time of the auction—it injects uncertainty into the process that raises the carrier’s price of deployment, and thus its competitive bid. Given the Commission’s desire to maximize broadband deployment while staying within

that this approach will reduce strain on demand for spectrum by enabling more intense frequency reuse by wireless providers.

⁷¹ See *FNPRM* at ¶ 1205.

⁷² See *id.* (seeking comment on alternative approach).

the confines of a limited budget,⁷³ the only practical way to proceed is to set the total number of locations to be served at the time of the auction.⁷⁴

7. Buildout timelines must be realistic.

With regard to deployment deadlines for recipients of CAF Phase II support,⁷⁵ Windstream urges the Commission not to impose broadband build-out timelines that are more aggressive than those presented in the ABC Plan.⁷⁶ Broadband deployment is a massive undertaking, requiring extensive engineering and analyses, discussions with a variety of parties to obtain permits and rights of way, and the negotiation of supply-chain difficulties and environmental challenges. The complexities of broadband deployment can make even a single project a multi-year effort. Initial coordination, including the assessment of current network facilities and development of a plan to leverage existing infrastructure in a way that minimizes capital investment, can take many months. The selection of routes and obtaining environmental approvals, permissions and rights of way to proceed along those routes are also extremely time-consuming. As Windstream has demonstrated previously, simply obtaining pole attachments can delay fiber deployment projects for a year or more.⁷⁷ From there, engineering and actual

⁷³ See, e.g., *id.* at ¶ 25.

⁷⁴ See *id.* at ¶ 1205 (noting that such an approach is “consistent with limiting the total amount of support available”).

⁷⁵ See *id.* at ¶ 1207.

⁷⁶ See ABC Plan, Attachment 1 at 7 (specifying that no later than five years after it is awarded CAF support, the recipient must make broadband available to a minimum number of service locations, based on the number of service locations in census blocks whose cost does not exceed the alternative technology threshold).

⁷⁷ See Letter from Jennie B. Chandra, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, GN Docket No. 09-51 (March 31, 2011) (explaining that it is not uncommon for a fiber deployment project to be delayed by one or two years because of make-ready issues).

construction on a single project take approximately nine months.⁷⁸ These realities, combined with the fact that broadband service providers will be juggling numerous deployment projects of substantial scope, necessitate that providers be permitted to operate under workable timelines that are not more aggressive than the timelines set forth in the ABC Plan.

8. Financial oversight should ensure accountability while being workable for both public and private companies.

Windstream understands the Commission’s desire for “vigorous ongoing oversight” to ensure that support recipients are held accountable for how they spend universal service funding.⁷⁹ At the same time, any adopted oversight framework must also be responsive to the financial needs and realities of the private and public companies that will receive support. In light of both these considerations, it would be unnecessary for the Commission to impose additional measures beyond those currently in place in the high-cost program. Under the existing rules, carriers receive monthly distributions and, as the Commission notes, USAC recovers support when recipients have received support to which they are not entitled, typically accomplishing the recovery through adjustments in future disbursements.⁸⁰ This framework, in combination with annual reports⁸¹, would offer a workable approach for ensuring substantial completion of deployment projects within the required timeframes.

⁷⁸ Such challenges led the Rural Utilities Service (RUS) to extend the timelines—originally three years—for construction of Broadband Initiatives Program (BIP) projects. The RUS noted in letters to grantees in the fall of 2011 that “weather, seasonal conditions and project volume have posed challenges for interagency and intergovernmental review processes, suppliers of goods and services and awardees.”

⁷⁹ See *FNPRM* at ¶ 568. See also *id.* at ¶¶ 1103 et seq. (seeking comment on measures to impose greater accountability on recipients of funding).

⁸⁰ *Id.* at ¶ 1112.

⁸¹ See *id.* at ¶ 580; new 47 C.F.R. § 54.313 (setting out federal annual reporting requirements for all ETCs).

IV. SERVICE OBLIGATIONS MUST BE ALIGNED WITH SUPPORT, AND REDUCTIONS IN SUPPORT MUST BE ACCOMPANIED BY A COMMENSURATE DECREASE IN VOICE SERVICE OBLIGATIONS.

As the Commission transitions to its new universal service regime, it is likely that current ETCs, including current carriers of last resort, will experience changes in support levels in particular areas and, in some cases, reduction or elimination of high-cost support for given areas. It is critical that the Commission consistently align service obligations with support, and any lack of or reduction in support should be accompanied, respectively, by an elimination or a decrease in voice service obligations, not the continuation of voice obligations and/or new broadband obligations.

In particular, as the ABC Plan proposes, ETCs should automatically be relieved of their legacy ETC obligations and ETC designations in those geographic areas in which they do not receive either legacy high-cost support or new CAF support, and remaining service obligations should apply only to the individual geographic units that receive support. Compelling carriers to continue to provide service where they do not receive support would be an unfunded mandate, and it would be arbitrary and capricious to require a particular unsupported carrier, such as an ILEC, to provide service where it does not receive support while other unsupported carriers are not held to such a requirement. Finally, the process of ETC relinquishments and service area redefinitions should be uniform regardless of whether a carrier is currently classified as a rural or non-rural carrier, because that approach would be most consistent with the Commission's expressed intent to eliminate the rural/non-rural distinction throughout the universal service system.

A. ETC Relinquishment and Service Area Redefinition Should Be Automatic.

As the ABC Plan sets forth, the Commission should ensure that legacy ETC regulations and requirements apply only when carriers receive support from the legacy universal service programs, and only in the particular areas that receive support. Such regulations and requirements should end whenever an ETC no longer receives any legacy high-cost or CAF support in a given area. Moreover, the Commission must preempt any state obligations to serve, such as COLR obligations for ILECs, as inconsistent with federal policy unless the state fully funds the obligations with explicit support and the ILEC agrees to accept the obligations in exchange for funding.⁸²

The ETC relinquishment and service area redefinition processes to execute this realignment of support and obligations should be automatic and self-effectuating. The Commission, accordingly, should not support the view that the existing ETC procedures, backstopped by the availability of forbearance from federal requirements, provide an appropriate case-by-case framework in the near term.⁸³ Instead, as the ABC Coalition has explained, the Commission, based on its section 201 rulemaking authority, should adopt a rule providing that an ETC's "service area" should be limited to those specific geographic areas where the ETC is receiving universal service support.⁸⁴ For existing ETCs, such a rule would ensure that legacy

⁸² ABC Plan, Attachment 1 at 13 (filed July 29, 2011) (ABC Plan).

⁸³ See *FNPRM* at ¶ 1097.

⁸⁴ See Letter from Heather Zachary, counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3 (filed October 19, 2011) (summarizing ex parte discussion between representatives of the ABC Plan Coalition companies and representatives of the FCC's Office of General Counsel and Wireline Competition Bureau).

service obligations and designations would only apply in those portions of state-defined service areas where the ETC actually receives support.⁸⁵

B. Compelling Carriers to Provide Service Where They Do Not Receive Support Would Be Unlawful.

The Commission cannot lawfully require any carrier to continue to provide service in any high-cost area where it is not the CAF recipient, or choose one unfunded carrier, such as the existing COLR, that must provide service while other unfunded carriers are not so obligated. First, compelling providers to continue providing service in any high-cost area where it does not receive support would constitute an unfunded mandate, in contravention of section 254, which requires the Commission to design its universal service programs so that support is “sufficient” to enable providers to offer the services deemed “universal.”⁸⁶ Second, such action—when under the new regime, only the CAF recipient is entitled to universal service funding, and forcing an unsupported competitor to provide service where it is uneconomic to do so and in competition with a CAF recipient—would violate section 254’s mandate that universal service policies be “equitable and nondiscriminatory.”⁸⁷ Third, such an obligation would run afoul of the Commission’s expressed intention that universal service policies “be competitively neutral . . . [and] neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”⁸⁸ Fourth, such action would constitute

⁸⁵ See *id.*

⁸⁶ 47 U.S.C. § 254(b)(5), (e), (f).

⁸⁷ *Id.* § 254(b)(4), (d), (f).

⁸⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶¶ 43-55 (1997). See also, e.g., *FNPRM* at ¶¶ 176-77 (endorsing principle of competitive neutrality).

a confiscatory regulatory taking in violation of the Fifth Amendment.⁸⁹ Finally, such an obligation would be arbitrary and capricious to the extent it applies to only one unfunded carrier in a given area without a rational justification for the distinction.⁹⁰

C. The Process for Redefining Carrier Obligations and Service Areas Should Not Depend on A Carrier’s Legacy Status as Rural or Non-Rural.

Whatever processes for ETC relinquishment and service area redefinition the Commission adopts, they should be uniform for all ETCs that are incumbent carriers, regardless of their current status as “rural” or “non-rural.”⁹¹ As the Commission acknowledges, the rural/non-rural distinction is an “artifact” and “vestige” of the legacy rules,⁹² and the Commission makes clear its intention, through these reforms, to move away from this artificial classification for the purposes of the distribution of support.⁹³ Indeed, the rule governing calculation and distribution of forward-looking support for non-rural carriers no longer applies, and the rural/non-rural distinction does not survive anywhere else in the revised high-cost

⁸⁹ See, e.g., *Brooks-Scanlon Co. v. R.R. Comm’n*, 251 U.S. 396, 399 (1920) (“The plaintiff may be making money from its sawmill and lumber business but it no more can be compelled to spend that [profit] than it can be compelled to spend any other money to maintain a railroad for the benefit of others who do not care to pay for it.”). See also AT&T CAF NPRM Comments at 125-128 (explaining that requiring providers to deploy broadband services in high-cost areas without just compensation effects a physical and regulatory taking).

⁹⁰ See, e.g., *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 US 29, 46-57 (1983) (unjustified inconsistency supports a finding of “arbitrary and capricious” rulemaking sufficient to allow rejection of an agency’s rules).

⁹¹ See FNPRM at ¶ 1096.

⁹² See *id.* at ¶ 129 (noting that “distinctions are . . . artifacts of our rules rather than required by the Act”); ¶ 130 (stating that whether a carrier is “rural” or “non-rural” has no relevance to whether it actually serves rural areas); ¶ 130 fn.206 (calling the distinction a “vestige” of the old rules).

⁹³ See, e.g., *id.* at ¶ 613 (stating that the “net effect of the changes that we are implementing to our high-cost programs is, as a practical matter, to shift the focus from whether a company is classified as “rural” versus “non-rural””); ¶¶ 133-34 (clarifying that the interim CAF distribution mechanism essentially erases the rural and non-rural distinction for price cap carriers).

universal service rules.⁹⁴ Under the circumstances, it would be entirely nonsensical to maintain the distinction in the context of ETC service obligations.

V. POTENTIAL SAVINGS REALIZED IN OTHER COMPONENTS OF THE CAF SHOULD NOT BE USED TO INCREASE FUNDING FOR RATE-OF-RETURN CARRIERS.

Windstream strongly opposes any suggestion that savings realized in other components of the CAF should be used to increase funding for rate-of-return carriers.⁹⁵ As the Commission acknowledges, a “rural-rural” divide in broadband access persists because “the existing program fails to direct money to all parts of rural America where it is needed.”⁹⁶ Price cap companies’ service territories today encompass more than 83 percent of the Americans who lack access to residential fixed broadband,⁹⁷ but because the current system does not target price cap support based on the cost conditions in individual wire centers, those areas are often underfunded.⁹⁸ To begin to address these deficiencies, the Commission is establishing CAF Phase I, in which it allocates up to \$300 million in additional support to price cap carriers to be distributed using a mechanism that estimates the forward-looking costs for individual wire centers.⁹⁹

It would be counterproductive to channel money away from price cap areas, where the greatest need for broadband funding is evident, to rate-of-return areas where broadband service already is available to a much greater degree—and commonly at speeds that are in excess of the

⁹⁴ See new 47 C.F.R. § 54.309(d) (stating that “Beginning January 1, 2012, no carrier shall receive support under this rule”).

⁹⁵ See *FNPRM* at ¶ 1034.

⁹⁶ *Id.* at ¶ 7.

⁹⁷ See *id.* at ¶¶ 133-134.

⁹⁸ See, e.g., Windstream 2008 Comments at 7-11.

⁹⁹ See *FNPRM* at ¶ 129 fn.201 (stating that the \$300 million in incremental support allocated to price-cap carriers will be the process of “closing the rural-rural divide by directing additional funds to areas served by price cap carriers”)

Commission’s 4 Mbps universalization target. Areas served by rate-of-return carriers often have access to state-of-the-art broadband because the system has incentivized rate-of-return carriers to increase their loop spending rather than limit costs to operate more efficiently.¹⁰⁰ Moreover, the Commission’s reform plans already provide for areas served by rate-of-return carriers to receive more support—approximately \$2 billion of a \$4.5 billion fund per year, versus up to \$1.8 billion for areas served by price cap carriers and their affiliated rate-of-return companies.¹⁰¹

In light of the differences in current funding and the Commission’s goals to expand broadband access and increase fiscal responsibility,¹⁰² it makes little sense to divert any funding away from other components of the CAF, particularly those that provide support for price-cap carriers, for the purpose of increasing funding to rate-of-return carriers. Moreover, the Commission has only begun to consider significant reforms to the rate-of-return system—such as transitioning legacy support for rate-of-return carriers to a broadband-focused CAF¹⁰³ and represcribing the authorized interstate rate of return¹⁰⁴—that are likely to have a profound impact on the existing funding regime. It would be premature to consider allocating additional support for rate-of-return carriers until the parameters of these reforms, and their effects, are better understood. To any extent that the reformed mechanisms may distribute less support to price cap carriers than has been budgeted for, the Commission should focus on ensuring that the remaining support and attendant obligations are appropriately aligned such that price cap carriers may

¹⁰⁰ See *id.* at ¶ 211 (explaining that rate-of-return carriers “have incentives to increase their loop costs and recover the marginal amount entirely from the federal universal service fund,” and that “carriers that take measures to cut their costs to operate more efficiently may actually lose support to carriers that increase their costs”).

¹⁰¹ See *id.* at ¶¶ 25, 27.

¹⁰² See *id.* at ¶ 11.

¹⁰³ See *id.* at ¶ 1032 *et seq.*

¹⁰⁴ See *id.* at ¶ 1044 *et seq.*

utilize the funding to support existing voice and broadband services and further new broadband access.

VI. THE COMMISSION SHOULD TAKE MEASURES TO ENSURE THAT THE REMOTE AREAS FUND DOES NOT PROVIDE DUPLICATIVE SUPPORT.

Windstream is not opposed to dedicating a portion of high-cost funding to a “remote areas” program dedicated to expanding broadband service in extremely high-cost areas.

However, the Commission should take measures, as it plans to in other areas of high-cost universal service reform, to avoid using limited funding inefficiently by subsidizing competition,¹⁰⁵ particularly in “areas that are challenging for even one provider to serve.”¹⁰⁶

First, in defining areas eligible for the Remote Areas Fund, the Commission should exclude any location where another carrier is required to provide voice service. As the Commission proposes, the recipient of Remote Areas funding should be required to provide voice telephony service¹⁰⁷ and should receive funding commensurate to that requirement; any other carrier previously obligated to provide voice service in that area should be relieved of that obligation. If, instead, the carrier of last resort remains obligated to provide voice service, it must be the recipient of any high-cost support for fixed voice service to avoid an unfunded mandate. Second, the Commission should exclude any location where an unsubsidized competitor offers standalone voice and broadband service at 4 Mbps downstream speeds. The Commission in other contexts has explicitly eliminated high-cost support in areas served by

¹⁰⁵ See, e.g., *id.* at ¶¶ 280-81 (eliminating high-cost support in areas served by unsubsidized competitors).

¹⁰⁶ See *id.* at ¶ 319.

¹⁰⁷ See *id.* at ¶ 1239.

unsubsidized competitors.¹⁰⁸ As in those cases, it is safe to assume that an area is not sufficiently remote or high-cost to warrant support if a carrier is able to provide robust broadband and voice service there without the assistance of a subsidy. To fund competition in such a case would be contrary to the Commission's principle of fiscal responsibility.¹⁰⁹

VII. CONCLUSION

Windstream supports rational reforms to transition the legacy high-cost universal service program to the CAF. A successful reform approach will support existing broadband and voice services in high-cost areas and lay the groundwork for new and better broadband service in high-cost areas that have been neglected under the legacy regime. As it proceeds, the Commission should keep an unwavering focus on enabling the provision of robust broadband and voice services in high-cost areas, and avoid imposing obligations, restrictions, and unnecessary complexities that ultimately would serve to undermine universal service objectives specified in Section 254(b) of the Communications Act.

Respectfully submitted,

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Dated: January 18, 2012

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¹⁰⁸ See, e.g., *id.* at ¶ 103 (stating that “all broadband buildout obligations for fixed broadband are conditioned on not spending the funds to serve customers in areas already served by an ‘unsubsidized competitor.’”).

¹⁰⁹ See, e.g., *id.* at ¶ 198.